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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1947

No. 292 to 296

(1) JOHN HENRY BRUNSON, *Petitioner,*

vs.

STATE OF NORTH CAROLINA, *Respondent.*

(2) ESSIE KING, *Petitioner,*

vs.

STATE OF NORTH CAROLINA, *Respondent.*

(3) MARTHA JONES, *Petitioner,*

vs.

STATE OF NORTH CAROLINA, *Respondent.*

(4) LOUISE JAMES (Alias MOORE), and EVELYN CHILDS, *Petitioners,*

vs.

STATE OF NORTH CAROLINA, *Respondent.*

(5) LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD STURDIVANT, and LOUVENIA WALLACE, *Petitioners,*

vs.

STATE OF NORTH CAROLINA, *Respondent.*

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA AND BRIEF IN SUPPORT OF PETITION.

WILLIAM REID DALTON,
NATHAN WITT,
Attorneys for Petitioners.

STATEME
THIS C
THE QU
REASONS
JURISDIC
STATEME
ERRORS
ARGUME
I.
II.
III.
CONCLUS

SUBJECT INDEX

Petition for Writs of Certiorari

PAGE

TEMENT OF THE MATTER INVOLVED 2

S COURT HAS JURISDICTION 7

QUESTIONS PRESENTED 8

SONS RELIED UPON FOR ALLOWANCE OF WRIT 8

Brief in Support of Petition for Writs of Certiorari

DUCTION 22

TEMENT OF THE CASE 23

ONS RELIED UPON 37

UMENT:

I. The Board of County Commissioners of Forsyth County arbitrarily and systematically discriminated against Negro and White citizens in jury selection contrary to the 14th Amendment of the Federal Constitution and the laws thereunder... 37

II. The Statutes of North Carolina permitting discrimination against White and Negro citizens in jury selection violate the 14th Amendment of the Federal Constitution 52

III. The Petitioner invoked the proper procedure to challenge the validity and constitutionality of the practices used by the County and the Court in drawing and selecting the jury..... 57

CLUSION 60

Table of Cases

PAGE

Bove vs. New York, 91 U. S. (L. Ed.) 1517 51
Buchanan vs. Worley, 245 U. S. 60 38
Ballard vs. U. S., 67 S. Ct. 261 ..... 21, 57
Fay vs. New York, 91 U. S. (L. Ed.) 1517 51
Glasser vs. U. S., 315 U. S. 60 ..... 21, 55
Hill vs. Texas, 316 U. S. 400 ..... 8, 9, 10, 38, 45, 58
Hormel vs. Helvering, 312 U. S. 552 ..... 11, 50
Martin vs. Texas, 200 U. S. 316 (1906) 38
Neal vs. Delaware, 103 U. S. 370 ..... 9, 10, 38, 46, 56
Norris vs. Alabama, 294 U. S. 587 ..... 9, 10, 21, 38, 47, 58
Pierre vs. Louisiana, 306 U. S. 354 ..... 9, 45
Smith vs. State, 45 Tex. Cr. 405, 77 S. W. 453 56
Smith vs. Texas, 311 U. S. 128 ..... 8, 9, 18, 21, 38, 49
State vs. Daniels, 134 N. C. 641 ..... 10, 19, 58
State vs. Kirksey, 227 N. C. 445 ..... 10, 17, 19, 58
State vs. Peoples, 131 N. C. 784 ..... 10, 18, 58
State vs. Walls, 211 N. C. 487, appeal dismissed, 302 U. S. 635 ..... 19, 21, 51
Thiel vs. Southern Pac. Co., 328 U. S. 136 ..... 10, 20, 54, 55, 57
Thomas vs. Texas, 212 U. S. 278 (1908) 19, 38
19 Boston Un. Law Rev. 413 56

Table of Statutes

Sec. 237 (b) Judicial Code U. S. Code, Title 28, Sec. 344 (b) 7, 22
18 Stat. 336 (1874) 18 U. S. C. Sec. 44 ..... 38, 50, 52
16 Stat. 144 (1870) 128 U. S. C. Sec. 74 38
Gen. Statutes of North Carolina, Chap. 4, Sec. 1 58
General Statutes of North Carolina, Ch. 9:
Sec. 1 33
Sec. 2 34
Sec. 3 34
Sec. 4 35
Sec. 7 35
Sec. 11 35
Sec. 24 36
General Statutes of North Carolina, Ch. 105, Sec. 341 ..... 6, 53

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PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA AND BRIEF IN SUPPORT OF PETITION.

PETITION FOR WRITS OF CERTIORARI

The petitioners, (1) John Henry Brunson, (2) Essie King, (3) Martha Jones, (4) Louise James (Alias Moore) and Evelyn Childs, and (5) Lida Mae Watkins, Celia Ann Purcell, James Edward Sturdivant, and Louvenia Wallace, respectfully petition this

Honorable Court for Writs of Certiorari to the Supreme Court of North Carolina, in their respective, above named, five cases.

These five cases were tried separately in the Superior Court of Forsyth County, North Carolina, before the same Judge, namely Hon. J. A. Rousseau, at the November Term 1946, and with the same counsel representing all of the defendants and with the same Motion to Quash filed in each case, separately, by each defendant; all of these Motions to Quash were overruled. to which rulings each defendant duly excepted as well as to the Findings of Fact thereon. As the evidence is exactly the same in all of these five cases, and as the same questions are presented, petitioners are making up and including all of these five cases in one Petition For Writs of Certiorari, and Brief. The only difference in these five cases being in the names of the respective defendants, the nature of the offense charged in the respective warrants, and in the time or term of sentence imposed in the respective judgments.

STATEMENT OF THE MATTER INVOLVED.

These five cases present serious questions relating to the constitutional rights under the Fourteenth Amendment of the Federal Constitution to trial in a State court by a jury free from arbitrary and systematic exclusion and limitation of Negro and White citizens.

From the heat engendered by picket line controversies in a laundry workers strike and labor dispute in Winston-Salem, North Carolina, arose the arrest of the petitioners.

Petitioner, John Henry Brunson, a Negro, was charged in the Municipal Court of Winston-Salem,

N. C., with an alleged assault on Christine Davis, a female, on Oct. 23, 1946, and was tried on Oct. 30, 1946, and sentenced to fifteen months on the roads (no jury being allowed or provided for in the creation and set-up of said Municipal Court of Winston-Salem). An appeal was taken to the Superior Court of Forsyth County.

Petitioner, Essie King, a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with disturbing the peace and disorderly conduct, on Oct. 29, 1946, and was tried on Oct. 30, 1946, and sentenced to 30 days in jail. An appeal was taken to the Superior Court of Forsyth County.

Petitioner, Martha Jones, a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with disturbing the peace and disorderly conduct on Oct. 28, 1946, and was tried on Oct. 31, 1946, and sentenced to 30 days in jail. An appeal was taken to the Superior Court of Forsyth County.

Petitioner, Louise James, (Alias Moore), a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with malicious injury to real property on Nov. 4, 1946, and was tried on Nov. 5, 1946, and sentenced to 30 days in jail. An appeal was taken to the Superior Court of Forsyth County.

Petitioner, Evelyn Childs, a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with malicious injury to real property on Nov. 4, 1946, and was tried on Nov. 6, 1946, and sentenced to 30 days in jail. An appeal was taken to the Superior Court of Forsyth County.

Petitioner, Lida Mae Watkins, a Negro, was charged in the Municipal Court of Winston-Salem,

N. C., under four (4) warrants, all sworn out on Oct. 29, 1946, with;

(1) An assault with a deadly weapon, to-wit, a stick, on Ethel Crews.

(2) An assault with a deadly weapon, to-wit, a stick, on G. W. Lancaster.

(3) Resisting officers while in the discharge of their duties.

(4) An assault with a deadly weapon, to-wit, a stick, on R. F. Holcomb,

and was tried on Oct. 30, 1946, and sentenced to six months in jail, three months in jail, six months in jail, and three months in jail, respectively. An appeal was taken to the Superior Court of Forsyth County in all of these four cases against Lida Mae Watkins.

Petitioner, Celia Ann Purcell, a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with an assault with a deadly weapon, to-wit, a stick, on Estelle Britt, on Oct. 29, 1946, and was tried on Oct. 30, 1946, and sentenced to six months in jail. An appeal was taken to the Superior Court of Forsyth County.

Petitioner, James Edward Sturdivant, a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with an assault on Estelle Britt, a female, on Oct. 29, 1946, and was tried on Oct. 30, 1946, and sentenced to six months in jail. An appeal was taken to the Superior Court of Forsyth County.

Petitioner, Louvenia Wallace, a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with an assault on Estelle Britt, on Oct. 29, 1946, and was tried on Oct. 30, 1946, and sentenced to 30 days in jail. An appeal was taken to the Superior Court of Forsyth County.

At the November Term 1946 of the Superior Court of Forsyth County, a motion to quash the warrant of arrest and for the discharge of the jury panel, was raised in each case the question of the arbitrary and systematic exclusion of Negro citizens and the limitation of the number of White citizens for jury service by the Board of County Commissioners for Forsyth County. There was also raised in each case, the question of the constitutional validity of the statutory prerequisites for jury service. Considerable testimony was taken in connection with the motion to quash, and can be briefly summarized as follows:

Jury lists are made up for jury service in Forsyth County, N. C., once every two (2) years by the Board of County Commissioners, from the tax records of the County, Forsyth County in 1945 (the last year in which biennial jury lists were prepared) has a population of 150,000 persons, 45 per cent of which were colored. Yet evidence adduced showed that no Negro had been summoned for service on the grand jury throughout the entire year 1946, up to and including the November Term 1946 of said Superior Court, the term at which these five cases at bar were tried. While one Negro was summoned and served on the petit-jury at the November Term 1946, namely, Jefferson H. Hairston, the uncontradicted testimony of the Sheriff of Forsyth County, Ernie G. Shore, who was charged with the responsibility for service of all jurors in Forsyth County, was that perhaps a dozen colored persons in all had been summoned for jury service, grand and petit, over a period of the last ten (10) years. An active trial lawyer, Mr. Slawter of Winston-Salem, with 31 years experience, was unable to state whether there had been as many as

10 Colored jurors actually serving on grand and petit juries in the last ten years.

The Board of County Commissioners, by their own admission, maintained separate lists for colored jurors for the biennial years 1941 and 1945. Of a total number of approximately 4,078 jurors serving over a period extending from October 1936 to October 1946, approximately 12 were of the Negro race.

As will appear in detail from table contained in petitioner's brief (Page 29), 90 percent to 95 percent of eligible Negro Jurors, and 55 per cent of eligible White jurors, were subjected to arbitrary discrimination and exclusion from the jury listings prepared by the County Commissioners for the said 10-year period.

With regard to the provisions of the North Carolina General Statutes claimed to be unconstitutional, Chapter 9 thereof restricts the jury lists to taxpayers who are either property owners or poll-tax payers. Furthermore, under North Carolina General Statutes, Chapter 105, Section 341, poll-tax payers include only males between the ages of 21 and 50. Therefore, if a male over 50 possesses no property, he is excluded from the jury lists by the terms of the Statute, Chapter 9. There is an additional requirement that talesmen be freeholders, Chapter 9, Section II.

The Superior Court of Forsyth County nevertheless made a finding that no discrimination had been shown, to which finding the petitioner duly excepted thereto. The Supreme Court of North Carolina found no error on the appeal. In the Koritz case (227 N. C. 552, State vs. Koritz, et al), the Supreme Court of North Carolina declared that the petitioners therein named had been contented with the jury drawn

without exhausting all of their peremptory challenges, although such contentment is definitely not discernible in the record in that case, and was not expressed in fact, as appears from the exceptions taken to the Court's Order and rulings, while in the cases at bar there was no challenge to the poll whatsoever, peremptory,—petitioner's challenge being to the array only of the grand jury and regular petit jury drawn out of the regular County jury-box to serve at the November Term 1946 of the Superior Court of Forsyth County, to which term petitioners' case was called for trial. Again in the cases at bar there was no Order made in the Superior Court of Forsyth County directing a special venire of 25 men to be summonsed, with 10 of the number to be Negroes, as was done in the Koritz case, (227 N. C. 552, State vs. Koritz, et al). In the cases at bar there is nothing in the record below in the Supreme Court of North Carolina showing or declaring that petitioner was contented or satisfied with the grand or petit jury drawn out of the regular County jury-box to serve at the November Term 1946. And yet the Supreme Court of North Carolina in its opinions in the cases at bar holding that its rulings in the Koritz case control its rulings in the cases at bar, in effect, declares that petitioner has been contented with the jury drawn.

THIS COURT HAS JURISDICTION.

This Court has jurisdiction under Sec. 237 (b) of the Judicial Code (U. S. Code, Title 28, Sec. 344 b). The Supreme Court of North Carolina decided these cases on June 5, 1947, and certified its decisions on June 12, 1947.

THE QUESTIONS PRESENTED.

1. Did the Board of County Commissioners of Forsyth County arbitrarily and systematically discriminate against Negro and White citizens in jury selection contrary to the 14th. Amendment of the Federal Constitution and the laws thereunder?

2. Do the Statutes of North Carolina permitting discrimination against White and Negro citizens in jury selection violate the 14th. Amendment of the Federal Constitution?

3. Did the petitioner invoke the proper procedure to challenge the validity and constitutionality of the practices used by the County and the Court in drawing and selecting the jury?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT.

The almost total absence of Negroes from juries in Forsyth County for a period of ten (10) years—which evoked no contradiction from the State — would, standing by itself, indicate discrimination in a County whose colored population equaled 45 percent of the total. And the presence of only 12 Negroes on juries over a period of ten (10) years, is, it is submitted, the equivalent of total exclusion. Hill vs. Texas, 316 U. S. 400; Smith vs. Texas, 311 U. S. 128. In addition, the exclusion of between 90 and 95 percent of otherwise eligible Negro citizens, and 55 percent of otherwise eligible White citizens, from jury lists prepared by the County Commissioners from tax records furnishes convincing proof of intention to discriminate and confine the jury service to a small, selective circle. Such actions as maintaining a separate list of jurors marked "Colored" de-

note active discrimination. The full factual appraisal of the uncontrovertible existence of systematic and arbitrary exclusion of Negro and White jurors is developed at length by the petitioner in his supporting brief. These practices are in sharp conflict with the decisions of this court, which has declared such systematic and arbitrary discrimination violative of the 14th. Amendment. The Supreme Court of the United States has been careful to assume jurisdiction in a number of cases where, as in the case at bar, evidence appeared that over a course of years, there had been systematic and discriminatory exclusion of members of the Negro race from jury panels. Hill vs. Texas, *supra;* Smith vs. Texas, *supra;* Pierre vs. Louisiana, 306 U. S. 354; Neal vs. Delaware, 103 U. S. 370; Norris vs. Alabama, 204 U. S. 587.

The Supreme Court of North Carolina merely accepted the conclusions of the Superior Court of Forsyth County that no discrimination had been shown, ignoring completely the agreed stipulation summarized in the petitioner's brief (Page 39), and the testimony of County officials, showing flagrant and systematic exclusion.

In its opinion, the Supreme Court of North Carolina made reference to the alleged contentment of the petitioner with the jury selected, because of failure to exercise peremptory challenges. But ten or more peremptory challenges would have been unavailing in providing a jury fairly and impartially drawn from the community and free of discrimination. Furthermore, the petitioner fully reserved his or her objection, as noted in the record. The remarks of the Supreme Court of North Carolina are consequently incomprehensible in this connection to the petitioner.

While it is true that earlier decisions of this court have apparently recognized State requirements of property ownership, tax payments, etc., as constitutional conditions precedent to jury service, yet it is submitted that present considerations call for re-examination of these disqualifying provisions. Where grave economic conflicts arise in communities, the exclusion of the propertyless from jury service can make trial by jury a mockery for the humble worker enmeshed in the coils of the law. This is the spirit that animates the decisions of this court in Thiel vs. Southern Pacific Company, 328 U. S. 136.

It is not the fixing of quotas for each race which makes for a fair trial by jury, but the absence of exclusionary practices against any race, class, or group of persons otherwise eligible that insures fairness in trial by jury.

If the jury was lacking in propriety because of its foundation on discriminatory practices, then the jury was unfit to try petitioner.

Petitioner first raised the questions of the constitutionality of the Statutes of North Carolina and the practices of the Board of County Commissioners of Forsyth County, in jury selection, by filing their motion to quash prior to the trial of the cause. This procedure has been followed in numerous cases coming to this court from common law jurisdictions. Hill vs. Texas, *supra;* Norris vs. Alabama, *supra;* Neal vs. Delaware, *supra.* The State of North Carolina is a common law State, (General Statutes of North Carolina, Chap. 4, Section I). Furthermore, the Supreme Court of North Carolina sanctions such procedure, State vs. Kirksey, 227 N. C. 445; State vs. Peoples, 131 N. C. 784; State vs. Daniels, 134 N. C. 641.

The Supreme Court of North Carolina, in its opinion in each of these five cases, stating that its rulings in the Koritz case (227 N. C. 552, State vs. Koritz, et al) were also controlling in the cases at bar, and thereby tieing the opinions up together, and declaring that the petitioner was satisfied with or contented with the grand jury and the petit jury drawn from the regular County jury box, or that petitioner's rights were waived, is most vigorously denied on the basis of the exceptions interposed, as shown by the record.

This procedural technicality (which is unsound and which was not urged by the State itself in the Superior Court of Forsyth County or on appeal to the Supreme Court of North Carolina) should not under any circumstances preclude this Court from consideration of serious questions involving basic and fundamental constitutional rights. Hormel vs. Helvering, 312 U. S. 552.

Shameful miscarriages of justice by juries which are not representative of the community, and which are not constitutionally selected, will continue without end if the facade of legality, such as erected in these cases by the public officials of Forsyth County, is allowed to obscure violations of the Fourteenth Amendment.

Equality under the law will remain a meaningless term in Forsyth County if its officials are not required to yield to the compulsions of the Fourteenth Amendment.

Respectfully submitted,

WILLIAM REID DALTON,
NATHAN WITT,
Attorneys for Petitioners.

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(5) LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD STURDIVANT, and LOUVENIA WALLACE *vs.* N. C.

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

The Opinion Below

As the opinion of the Supreme Court of North Carolina in the Koritz, et al, case (227 N. C. 552) is decisive of and becomes also the opinion of the Su-

preme Court of North Carolina in each and all of these five cases, it is reproduced below:

"Supreme Court of North Carolina—Spring Term, 1947, No. 723—*State vs. Philip Milton Koritz, Cal Roberson Jones, and Margaret DeGraffenreid.*

Appeals by defendants from Rousseau, Jr., October Term, 1946, of Forsyth.

Criminal prosecutions on four separate warrants charging the defendants, Philip Milton Koritz, Cal Roberson Jones, Margaret DeGraffenreid, and Betty Keels Williams, severally, with resisting, delaying or obstructing a police officer of the City of Winston-Salem in discharging or attempting to discharge a duty of his office in violation of G. S. 14-223, consolidated and tried together as all of the alleged offences arise out of the same transaction or the same series of transactions.

The cases were tried originally in the Municipal Court of the City of Winston-Salem and again *de novo* on appeal to the Superior Court of Forsyth County.

When the cases were called and consolidated for trial in the Superior Court, the defendants first interposed a motion to quash the warrants and to discharge the panel of petit jurors because of discrimination against the Negro race in making up the jury list from which the jurors were summoned for the term. Three of the defendants are Negroes; one is a White man. Several days were consumed in hearing the motion, with both sides offering evidence in respect of the matter.

The defendants offered evidence tending to show, according to their contention, that the number of Negroes selected for jury service out of the total number of eligible Negroes in the County was disproportionately small to the number of Whites selected in the same manner, and that the use of separate tax lists for Whites and Negroes was discriminatory against both races. Out of 23,450 possible eligible White jurors, only 10,367 names appear in the box; and out of 4,900 possible Negro jurors only 255 names are in the box. The result is discrimination against both races, so the defendants say.

The State, on the other hand, offered evidence tending to show, so it contends, that there was no studied or deliberate discrimination against either race on the part of the jury commissioners, and that the large number of Whites as compared with the number of Negroes who were actually selected for jury service was not the result of any prejudice or intentional discrimination against the latter race. Walter A. Mickle, the County-City Tax Collector, and former deputy sheriff who assisted in the annual drawing of juries from 1936 to 1946 says: 'I never heard any commissioner discuss whether a man was black or white, that I remember, during the time I was in the office as Chief Deputy, at the drawing of the jury.'

After hearing the evidence, the trial court made the following findings:

1. That is the defendants are being tried upon warrants, and not upon bills of indictment, the method of selecting grand juries in Forsyth County is not germane to the present motion.

2. That a fair representation of Negroes was placed in the jury box by the commissioners, and that there was no intentional discrimination in preparing the jury list either in respect of color or religion.

The court thereupon overruled the motion to quash the warrants and the jury panel. Defendants excepted to the findings and rulings. Exceptions Nos. 1 and 2.

Announcement was then made that each defendant would have six peremptory challenges, making a total of 24, and that there were only 20 regularly drawn and summoned jurors. The court ordered that 25 talesman be summoned, not less than ten of whom should be Negroes. On inquiring of counsel for defendants whether the talesmen should be drawn from the box or summoned by the sheriff from among the persons qualified to act as jurors in the County, counsel for the defendants, Mr. Avnet, replied: 'In the light of our motion, I would not care to indicate; just leave that matter for your Honor.' It was agreed that a venire of 25 would be sufficient, but defendants excepted to the order. Exception No. 3.

The jury as finally selected was composed of seven Whites and five Negroes. Six were taken from those regularly drawn and summoned for the term, and six from the special venire. The defendants used 23 of their 24 peremptory challenges, one being in respect of a Negro on the special venire. They still had one peremptory challenge left when the jury was completed. The court found that the proportion of Negroes on the jury,

as finally selected, was generous to that race. Exception by the defendants. Exception No. 4.

Verdicts: Guilty as to Philip Milton Koritz, Cal Roberson Jones, and Margaret DeGraffenreid. Not guilty as to Betty Keels Williams.

Judgments: 12 months on the roads as to Philip Milton Koritz; 10 months on the roads as to Cal Roberson Jones; and eight months on the roads as to Margaret DeGraffenreid.

The defendants appealed, assigning errors.

Attorney-General McMullan, and Assistant Attorneys-General Bruton, Rhodes, and Moody, for the State.

William Reid Dalton, I. Duke Avnet, and Harold Buchman, for defendants.

Stacy, C. J. The defendants have abandoned all their exceptions, save the first four which go to the competency of the petit jurors selected to try the consolidated cases. When all is said and done in respect to these exceptions, we are met with the paramount fact that the jury as finally selected was satisfactory to the defendants, and they were not required to take any juror over objection. They announced their contentment with the jury without exhausting all their peremptory challenges. It was composed of 7 White men and 5 Negroes.

In respect of special veniremen summoned to serve as petit jurors, a challenge to the array may be interposed for cause; and if this be overruled, challenges to the polls are still available. S. vs. Kirksey, 227 N. C. 445; S. vs. Levy, 187 N. C. 581; 122 S. E. 386. To present an exception on rulings to challenge to the polls, the appellant is required to exhaust his peremptory challenges and then undertake to challenge another juror. Oli-

phant vs. R. R., 171 N. C. 303, 88 S. E. 425. The court's action in the matter must be hurtful and its effect unavoidable before it will be held to vitiate the trial. S. vs. Cockman, 60 N. C. 484; S. vs. Benton, 19 N. C. 196.

The trial court was at pains to see that every opportunity was afforded for the selection of a fair and impartial jury. The defendants would be entitled to no more on a new trial, and this they have already had. S. vs. Levy, 187 N. C. 581, 122 S. E. 386; S. vs. Sulton, 142 N. C. 569, 54 S. E. 841; S. vs. English, 164 N. C. 497, 80 S. E. 72; S. vs. Bohanon, 142 N. C. 695, 55 S. E. 797. Their right is not to select but to reject jurors. Having been tried by twelve jurors who were unobjectionable to them, the defendants have no valid ground to urge that they have been prejudiced by the composition of the jury. S. vs. Pritchett, 106 N. C. 667, 11 S. E. 375; S. vs. Hensley, 94 N. C. 1021. 'The defendant did not exhaust his peremptory challenges . . When such is the case, the objection to a juror who could have been rejected peremptorily is not available.' S. vs. Bohanon, supra; Oliphant vs. R. R., 171 N. C. 303, 88 S. E. 425.

The trial court was obviously correct in holding that the composition of the grand jury could in no way effect the defendants. They were tried on warrants sworn out in the Municipal Court, and not on bills of indictment returned by the grand jury, as was the case in S. vs. Peoples, 131 N. C. 784, 42 S. E. 814. No rights of theirs were passed upon by the grand jury. The question is put aside as irrelevant. The case of Smith vs. Texas, 311 U. S. 128, 85 L. Ed. 84, strongly relied upon by the de-

fendants, dealt with the composition of a grand jury. It is inapplicable here.

The principal point, argued by the defendants, is the manner in which the petit jurors were selected. Six regular jurors who were summoned for the term did serve on the jury, and it is these jurors of which the defendants now complain, albeit they might have been excused with or without cause. It has been held in a number of cases that mere irregularity on the part of the jury commissioners in preparing the jury list, unless obviously, designedly, or intentionally discriminatory, would not vitiate the list or afford a basis for a challenge to the array. S. vs. Daniels, 134 N. C. 641, 46 S. E. 743; S. vs. Kirksey, ante. ..... There is a finding on the present record, which is supported by the evidence, that no discrimination was intended or resulted from the manner in which the jury list was prepared. This suffices to sustain the ruling below, in the absence of some pronounced ill consideration. S. vs. Lord, 225 N. C. 354, 34 S. E. (2d) 205; S. vs. Henderson, 216 N. C. 99, 3 S. E. (2d) 357; S. vs. Bell, 212 N. C. 20, 192 S. E. 852; S. vs. Walls, 211 N. C. 487, 191 S. E. 232; S. vs. Cooper, 205 N. C. 657, 172 S. E. 199; Adkins vs. Texas, 325 U. S. 398, 89 L. Ed. 1692; Thomas vs. Texas, 212 U. S. 278, 53 L. Ed. 512.

In no event could the defendant Koritz profit from, or be hurt by, the alleged discrimination against the Negro race, as he is a member of the White race. S. vs. Sims, 213 N. C. 590, 197 S. E. 176.

Moreover, an absolute numerical ratio or balance between the races is not required, nor even possible perhaps. 'Some play must be allowed for

the joints of the machine.' M. T. & K. Ry. Co. vs. May, 194 U. S. 267. The problem involves more than mere mathematics or simple arithmetic. Equality can result from disparity in numbers, just as discrimination can result from equality among unequals. Character and intelligence are common to members of both races, with varying degrees of quality, dependent upon the individual, regardless of race. Nor can they be determined or measured by statute. The standard of qualification is prescribed by law. Its application is the place of the rub. The rules of fair play are not difficult to understand. They are only difficult to practice. The end in view is to get a fair cross section of community judgment. Hence, as local officials are in better position than outsiders to weigh the imponderables, their determination of the matter will be upheld unless too wide of the mark or 'unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.' Adkins vs. Texas, 325 U. S. 398, 89 L. Ed. 1692; Louisville Gas Co. vs. Coleman, 277 U. S. 32.

It is the contention of the defendants, however, that our statutes on the subject contain inherent, constitutional infirmities in that the jury list is taken from the names of taxpayers of the county who are of good moral character and of sufficient intelligence. For this position they rely chiefly upon the recent case of Thiel vs. Southern Pacific Co., 328 U. S. 217, 90 L. Ed. 1181. The cited case is hardly an authority for the position taken. There, the Supreme Court of the United States was exercising a supervisory power over the administration of justice in the Federal Courts, and was not con-

cerned with any constitutional question. To like effect is the decision in McNabb vs. U. S., 318 U. S. 332, 87 L. Ed. 819.

Nor are cases of Norris vs. Alabama, 294 U. S. 587, 79 L. Ed. 1074; Smith vs. Texas, 311 U. S. 128, 85 L. Ed. 84; Glasser vs. United States, 315 U. S. 60, 86 L. Ed. 680, and others cited by the defendants, controlling on the instant record. The present case, in its factual situation, is strikingly similar to the one presented in the case of S. vs. Walls, *supra*, where a like ruling was upheld and on appeal to the Supreme Court of the United States, the decision was left undisturbed, the appeal being dismissed, 302 U. S. 635.

Of course, it is understood that the intentional, arbitrary and systematic exclusion of any portion of the population from jury service, grand or petit, on account of race, color or creed, is at variance with the Constitution and cannot stand. Adkins vs. Texas, 325 U. S. 398, 89 L. Ed. 1692. It is not the right of any party, however, to be tried by a jury of his own race, or to have a representative of any particular race on the jury. It is his right to be tried by a competent jury from which members of his race have not been unlawfully excluded. Ballard vs. United States, 67 S. C. Rep. 261, 91 L. Ed. (Adv. Op.) 195. 'The law not only guarantees the right of trial by jury, but also the right of trial by a proper jury; that is to say, a jury possessing the qualifications contemplated by law.' Hinton vs. Hinton, 196 N. C. 341, 145 S. E. 615.

The broadside challenge to the States' whole method of selecting jurors, regular, special and talesman, calls for only a passing word. There is

no mention of race, color or creed in any of the statutes on the subject, and whatever limitations are to be found therein apply equally to all races. It was said as early as Strauder vs. West Virginia, 100 U. S. 303, 25 L. Ed. 664, that within constitutional bounds a state may confine the selection of its jurors 'to males, to freeholders, to citizens, to persons within certain ages, or to persons having educational qualifications.' 31 Am. Jur. 594. The defendants boldly assert that they are immune from trial in Forsyth County so long as the present method of selecting juries obtains therein. The conclusion is a *non sequitur* on the facts as revealed by the record. The challenge is not sustained.

A careful perusal of the record leaves us with the impression that no reversible error has been made to appear in respect of the matters of which the defendants now complain. Hence, the verdict and judgments will be upheld.

No Error."

JURISDICTION.

The jurisdiction of this Court is involved under Section 237 (b) of the Judicial Code (U. S. Code, Title 28, Sec. 344 (b), The Supreme Court of North Carolina has decided a case "where is drawn in question the validity of a statute . . . . . on the ground of its being repugnant to the Constitution . . . . . or laws of the United States" . . . . . and "where . . . . . title, right, privilege, or immunity is specially set up or claimed . . . . . under the Constitution . . . . . or Statute of the United States . . . . . ." Judgment was entered in all of these five cases by the Supreme Court of North Carolina on June 5, 1947.

STATEMENT OF THE CASE.

Petitioner, John Henry Brunson, a Negro, was arrested for allegedly assaulting a female, Christine Davis, on Oct. 23, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem, N. C., on Oct. 30, 1946, and sentenced to fifteen months on the roads, from which judgment he appealed to the Superior Court of Forsyth County, where, at the November Term 1946 the case was called for trial. Immediately upon the call of the case by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, Essie King, a Negro, was arrested for allegedly disturbing the peace and disorderly conduct on Oct. 29, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem on Oct. 30, 1946, and sentenced to 30 days in jail, from which judgment she appealed to the Superior Court of Forsyth County, where, at the November Term 1946 the case was called for trial. Immediately upon the call of the case by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly

excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, Martha Jones, a Negro, was arrested for allegedly disturbing the peace and for disorderly conduct on Oct. 29, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem on Oct. 31, 1946, and sentenced to 30 days in jail, from which judgment she appealed to the Superior Court of Forsyth County, where at the November Term 1946 the case was called for trial. Immediately upon the call of the case by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, Louise James, (Alias Moore), a Negro, was arrested for malicious injury to real property on Nov. 4, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem on Nov. 5, 1946, and sentenced to 30 days in jail, from which judgment she appealed to the Superior Court of Forsyth County, where at the November Term 1946 the case was called for trial. Immediately upon the call of the case by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled

and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, Evelyn Childs, a Negro, was arrested for malicious injury to real property on Nov. 4, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem, N. C., on Nov. 6, 1946, and sentenced to 30 days in jail, from which judgment she appealed to the Superior Court of Forsyth County, where at the November 1946 Term the case was called for trial. Immediately upon the call of the case by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, Lida Mae Watkins, a Negro, was arrested on Oct. 29, 1946, under four (4) warrants, charging her with;

(1) An assault with a deadly weapon, to-wit, a stick, on Ethel Crews,

(2) An assault with a deadly weapon, to-wit, a stick, on G. W. Lancaster,

(3) Resisting officers while in the discharge of their duties,

(4) An assault with a deadly weapon, to-wit, a stick, on R. F. Holcomb,

growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem, N. C., on Oct. 30, 1946, in all of said four cases, and

was sentenced to six months in jail, three months in jail, six months in jail, and three months in jail, respectively, from which judgments she appealed to the Superior Court of Forsyth County, where at the November 1946 Term these four (4) cases were called together for trial by the State. Immediately upon the call of these four cases by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the court's Findings of Fact thereon.

Petitioner, Celia Ann Purcell, a Negro, was arrested for allegedly assaulting Estelle Britt with a deadly weapon, to-wit, a stick, on Oct. 29, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem on Oct. 30, 1946, and sentenced to six months in jail, from which judgment she appealed to the Superior Court of Forsyth County, where at the November 1946 Term the case was called for trial by the State. Immediately upon the call of the case by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, James Edward Sturdivant, a Negro, was arrested for allegedly assaulting Estelle Britt, a female, on Oct. 29, 1946, growing out of a laundry

workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem on Oct. 30, 1946, and sentenced to six months in jail, from which judgment he appealed to the Superior Court of Forsyth County, where at the November 1946 Term the case was called for trial by the State. Immediately upon the call of the case by the State for trial petitioner filed a motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, Louvenia Wallace, a Negro, was arrested for allegedly assaulting Estelle Britt, on Oct. 29, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem, N. C., on Oct. 30, 1946, and sentenced to 30 days in jail, from which judgment she appealed to the Superior Court of Forsyth County, where at the November 1946 Term the case was called for trial by the State. Immediately upon the call of the case by the State for trial petitioner filed a motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

The evidence of Petitioner's and the States' witnesses, in connection with the motions to quash, com-

prise the facts relevant to petitioner's appeal in all of these five cases.

PROOF OF DISCRIMINATION.

The petitioner's motion to quash, alleged, among other things that the grand and petit jurors drawn, summoned and serving at the November 1946 Criminal Term, at which petitioner's case was being tried, consisted of White people.

The law of the State of North Carolina requires that the jury lists from which the jurors are chosen shall be made up every two (2) years by each County (Chap. 9, Sec. I, General Statutes of N. C., 1943).

A stipulation of counsel was filed in each case from which it appears that a total of 51,916 names of prospective jurors were on the biennial jury lists of Forsyth County for the biennial period of 1935, 1937, 1939, 1941, 1943, and 1945. The stipulation also reveals a separate list of Negroes marked "Colored" was drawn in 1941, and 1945, as prospective jurors. It is uncontradicted that these lists marked "Colored" contained the names of all the colored jurors whose names appeared in the box for the biennial jury lists of 1941 and 1945. For the year 1941, the names of only 236 Negroes appear, in a total of 8,872 prospective jurors; for the term 1945 (which includes the term of the court during which the appellant was tried) the names of only 255 Negroes appear in a total of 10,622 prospective jurors.

The Clerk of the Superior Court for Forsyth County, William E. Church, testified he had made a search of his records for the purpose of showing the number of jurors who had been summonsed for jury service and the number who had actually served. Based on

his testimony, approximately 4,087 jurors, in all, served during the ten (10) years. Of this number a maximum of only 12 was of the Negro race.

A table is presented at this point illustrating and detailing the evidence of the witness, William E. Church, showing how the above figures are calculated.

Table

From Oct. 12, 1936, through July 11, 1938 (1¾ yrs.)		
Total number summoned	1,012	
Excused from service	113	
Total serving		899
From July 12, 1938, through January 1, 1942 (3½ yrs.)		
Total number summoned	2,024	
Excused from service,	226	
Total serving,		1,798
(Note: Witness Church testified that the number summoned and excused for this period was in the same ratio as in the preceding period.)		
From January 1, 1942, to (Spring) March 1, 1946 (4 1/6 yrs.)		
Total number summoned	1,204	
(Note: The witness testified that during the War period the number drawn and summoned was in a ratio of about 50 per cent of the number in the preceding periods.)		

Number excused based on same ratio	134	
Total serving		1,070
From March 1, 1946, to (Oct. Term Court, 1946) Oct. 7, 1946, (7½ mos.)		
Total number summoned,	360	
(Note: The witness testified that the number summoned for this period was in the same ratio as in the 1936 to 1938 period.)		
Number excused	40	
Total serving		320
GRAND TOTAL SERVING FROM Oct. 12, 1936 TO Oct. 19, 1946, (or a period of ten years)		4,087
TOTAL COLORED SERVING ON JURY DURING 10 YEAR PERIOD	12	
TOTAL WHITE SERVING ON JURY DURING 10 YEAR PERIOD	4,075	
		4,087

The defendant's first witness was Margaret Bell, an employee of the Winston-Salem Chamber of Commerce, who testified that one of her duties was to collect data on the population census of Forsyth County. She testified further that the last United States census for Forsyth County in 1940 showed a population of 126,475 persons, of whom

approximately 45% were Colored and 55% were White. An unofficial estimate of the 1946 population advanced by her was 150,000 persons, with 45% being Colored.

Virgil W. Joyce, the County Tax Supervisor for Forsyth County since 1938, estimated tax listings, from which the jury lists are required by law to be taken, of 43,000 taxpayers of whom 32,500 are White and 4,000 Colored. He referred to 3,000 additional colored garnishees for poll taxes and an additional 1,000 white persons delinquent in poll taxes only. He estimated that 10% of the tax listers of Forsyth County are women; 3% to 5%, non-residents, and 5% to 10% as guardians and guardian accounts.

The County-City Tax Collector, Walter A. Mickle, testified that 97% of the taxes levied were collected for the year 1945, including the taxes levied on the 3,000 Colored delinquents and the 1,000 White delinquents.

The Sheriff of Forsyth County, Ernie G. Shore, (who had held office since 1936) testified that no colored people were drawn or summoned for service on the grand jury for the present term of the Superior Court of Forsyth County, and that only one Negro, Jefferson H. Hairston, had been drawn and summoned for service, and was serving as a petit-juror at the present term of said Court. His office was responsible for the summoning of all jurors. He added, "There haven't been very many colored persons summoned. I would say perhaps a dozen in all Colored persons have been summoned from Dec. 7, 1936, when I took office as Sheriff of Forsyth County up until the present time." He estimated five had served on grand juries.

A prominent local lawyer, Mr. John D. Slawter, with an active trial practice of some 31 years, testified that there had been colored jurors, but could not estimate their number. He thought there were more than 4 or 5 who had served on the grand jury and petit jury in the past 10 years. He could not state whether there had been as many as 10. Two other local residents testified that they had been about the courts frequently and saw few, if any, Colored persons on the juries over the past few years.

The Solicitor for the State admitted that no Negroes served on the Grand Jury in the year 1946.

James G. Hanes, Chairman since 1928 of the County Board of Commissioners, (which has the responsibility of drawing up the jury lists biennially), testified that he and the other Commissioners turned over the tax cards to the Register of Deeds, who prepared the jury lists. He disclaimed knowledge of the number of names put into the jury box and stated that he did not inquire about the number put in the jury box but left all of these matters up to Mr. Lentz, the Register of Deeds. He further testified that in his opinion the figure 8,834, out of a total of 40,000 taxpayers, did not represent an unreasonable and unusually low number of names to go into the jury box for the biennial period commencing in 1941, and that the figure 10,367 did not represent a low percentage of names to go into the jury box for the biennial period commencing in 1945. He disclaimed knowledge of the separate lists marked "Colored." He declared that he did not know what proportion the colored population in Forsyth County bore to the total population. He further testified that all he knew about it was that the names in the jury box contained the same proportion of colored to whites

as the tax lists did. He stated that never was there discussion of the color of a juror. No records were kept of the jurors rejected, but he added "not a great number of them were rejected." The percentage rejected for moral character and intelligence, he testified, was very, very small.

The Court overruled and denied defendant's Motion to Quash to which defendant duly excepted, and later made its Findings of Fact thereon, to which Findings of Fact the defendant duly excepted thereto.

The Motion to Quash, being an Interlocutory Motion, was heard and passed upon by Judge J. A. Rousseau, Presiding, and holding the Superior Court of Forsyth County, without the intervention of a jury, —no jury being required or necessary under North Carolina procedure and practice. At the time the Motion to Quash was called and heard no jury had been impaneled and no petit jurors had been called up, sworn, or examined, relative to serving on the case at bar.

Jury Statutes of North Carolina

Chapter 9, General Statutes of North Carolina, (1943) provides the framework for the selection of jurors.

Section 1 states;

"The Board of County Commissioners for the several counties at their regular meetings on the first Monday in June, in the year 1905, and every two years thereafter, shall cause their clerks to lay before them the tax returns of the preceding year for their county, from which they shall proceed to select the names of all such persons as have paid all the taxes assessed against them for the preceding year

and are of good moral character and of sufficient intelligence. A list of the names thus selected shall be made out by the Clerk of the Board of Commissioners and shall constitute the jury list, and shall be preserved as such."

Section 2 provides;

"The Commissioners at their regular meeting on the first Monday in July in the year 1905, and every two years thereafter, shall cause the names on their jury list to be copied on small scrolls of paper of equal size and put into a box procured for that purpose, which must have two divisions marked number one and number two, respectively, and two locks, the key of one to be kept by the sheriff of the county, the other by the chairman of the Board of Commissioners, and the box by the Clerk of the Board."

Section 3 states;

"At least 20 days before each regular or special term of the Superior Court, the Board of Commissioners of the County shall cause to be drawn from the jury box out of the partition marked No. 1, by a child not more than ten years of age, 36 scrolls except when the term of court is for the trial of civil cases exclusively, when they need not draw more than 24 scrolls. The persons whose names are inscribed on said scrolls shall serve as jurors at the term of the Superior Court to be held for the county ensuing such drawing, and for which they are drawn. The scrolls so drawn to make the jury shall be put into the partition marked No. 2. The said Commissioners shall at the same time and in the same manner draw the names of 18 persons who shall be summoned to appear and serve during the second week, and a like number for such succeeding week of the term of said

court, unless the judge thereof shall sooner discharge all jurors from further service. The said Commissioners may, at the same time and in the same manner, draw the names of 18 other persons, who shall serve as petit jurors for the week for which they are drawn and summoned. The trial jury which has served during each week shall be discharged by the judge at the close of said week, unless the said jury shall be then actually engaged in the trial of a case, and then they shall not be discharged until the trial is determined."

With respect to Forsyth County, Section 4 provides;

". . . . . the Board of County Commissioners is authorized and empowered to draw as jurors from the box, as provided in the preceding section, an additional number of jurors to those now provided by law. . . . At all criminal terms, regular and special, for the first week, 42 jurors shall be drawn and summoned."

Section 7 adds;

"If any of the persons drawn to serve as jurors are dead, removed out of the county, or otherwise disqualified to serve as jurors, the scrolls with the names of such persons must be destroyed, and in such cases other persons shall be drawn in their stead."

Section II deals with talesmen;

"That there may not be a defect of jurors, the sheriff shall by order of the court summon, from day to day, of the bystanders, other jurors, being freeholders, within the county where the court is held, or the judge may, in his discretion, at the beginning of the term direct the tales jurors to be

drawn from the jury box used in drawing the petit jury for the term, in the presence of the court; such tales jurors so drawn to be summoned by the sheriff and to serve on the petit jury, and on any day the court may discharge those who have served the preceding day. The judge may, upon his own motion, or upon the request of counsel for either plaintiff or defendant, instruct the sheriff to summons such jurors, outside of the courthouse. It is a disqualification and ground of challenge to any tales juror that such juror has acted in the same court as grand, petit or tales juror within two years next preceding such term of court."

Section 24 provides;

"The judges of the Superior Court, at the terms of their courts, except those terms which are for the trial of civil cases exclusively, and special terms for which no grand jury has been ordered, shall direct the names of all persons returned as jurors to be written on scrolls of paper and put into a box or hat and drawn out by a child under ten years of age; whereof the first 18 drawn shall be a grand jury for the court; and the residue shall serve as petit jurors for the court."

These provisions constitute the method of jury selection relevant to a consideration of the record in this case. It may be well to add at this point that the General Statutes of North Carolina (1943), Chapter 105.

Section 341 provides;

"There shall be levied by the Board of County Commissioners in each county a tax of $2.00 on each taxable poll or male person between the ages of 21 and 50 years . . . . ."

ERRORS RELIED UPON.

1. The Supreme Court of North Carolina erred in holding that the Board of County Commissioners of Forsyth County had not arbitrarily and systematically discriminated against Negro and White citizens in jury selection contrary to the 14th. Amendment of the Federal Constitution and laws thereunder.

2. The Supreme Court of North Carolina erred in finding that the Statutes of North Carolina permitting discrimination against White and Negro citizens in jury selection did not violate the Fourteenth Amendment of the Federal Constitution.

3. The Supreme Court of North Carolina erred in finding that the petitioner failed to invoke the proper procedure to challenge the validity and constitutionality of the practices used by the County and the Court in drawing and selecting the jury.

ARGUMENT.

I.

The Board of County Commissioners of Forsyth County arbitrarily and systematically discriminated against Negro and White citizens in jury selection contrary to the 14th. Amendment of the Federal Constitution and laws thereunder.

Whenever by any action of a State, whether through its Legislature, through its Courts, or through its Executive or Administrative offices, persons are excluded solely because of their race or color from serving as grand or petit jurors in criminal prosecutions, the equal protection of the laws is denied to the defendant, contrary to the 14th.

Amendment of the Constitution of the United States.

This is the settled principle established in a long line of decisions from the United States Supreme Court. Norris vs. Alabama, 294 U. S. 587; (1935); Neal vs. Delaware, 103 U. S. 370 (1881); Smith vs. Texas, 311 U. S. 128; Hill vs. U. S., 316 U. S. 400.

This right to a trial by jurors selected without discrimination is further buttressed by Federal Statute;

"No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified by service as a grand or petit juror in any court of the United States, or of any state, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizens for the cause aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than $5,000."

18 Stat. 336 (1874), 8 U. S. C. sec. 44. See also right of removal to Federal Court, 16 Stat. 144 (1870), 28 U. S. C. sec. 74.

Not that the accused can demand, as a matter of right, a mixed jury or a pro rata proportion of Negro to White. "What an accused is entitled to demand under the Constitution of the United States, is that in organizing the grand jury as well as the impanelling of the petit jury, there shall be no exclusion of his race, and no discrimination against them, because of their race or color." Martin vs. Texas, 200 U. S. 316, (1906); Thomas vs. Texas, 212 U. S. 278, (1908).

In 245 U. S. 60, Buchanan vs. Warley, Justice Day, in an unanimous opinion of the court, in discussing

the history of the 14th. Amendment and the rights and benefits secured therein, said;

"While a principal purpose of the latter Amendment was to protect persons of color, the broad language used was deemed sufficient to protect all persons, white or black, against discriminatory legislation by the States. This is now the settled law." (p. 76.)

"What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color?"

"The 14th. Amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms, and those are as comprehensive as possible. The language is prohibitory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection, either for life, liberty, or property. Any State action that denies this immunity to a colored man is in conflict with the Constitution." (p. 77.)

The question, then, is of the application of these established principles to the facts disclosed by the record.

Did the Board of County Commissioners observe the law in their preparation of the jury lists? The record indicates a vigorous negative. There were 40,500 eligible taxpayers. Making maximum estimates, much higher than warranted by the record, there were 10% women, 5% non-residents, 7.5%

guardian accounts; assuming a figure of 7.5% as persons disqualified for morals and intelligence (although the record would indicate less, a total of disqualifications in the neighborhood of 30% can be approximated, making very generous allowances. Deducting a full 30% from the 40,500 eligible taxpayers, leaves 28,350 prospective jurors for the jury lists compiled in 1945. Yet only 10,622 found their way into the jury lists! The case of the missing 17,728 prospective jurors is a serious irregularity that can be charged against the Board of County Commissioners.

Furthermore, it should be observed from the Table that the total number on the jury list for the biennial period 1945-1947 was 332 less than that for the biennial period of 1935-1937 and in face of the fact that a period of 10 years had elapsed during which 10 year period of time the population of Forsyth County, which is highly industrialized and constitutes one of the State's most populous Counties, was growing by leaps and bounds as shown by the U. S. Census Tables. (For the year —77,267; for the year—1930—111,681; for the year 1940—126,475; and an estimate of the population for the year 1946 of 150,000 was made by the Winston-Salem Chamber of Commerce.

Confining the examination to the question of discriminated Negroes, if 4,000 were considered the number of paid-up Colored taxpayers, and 30% were removed as disqualified, then a balance of 2,800 should have appeared as eligible for jury service on the jury lists. On the other hand, if the 7,000 were used (including the 3,000 delinquents) then 4,900 would represent the Colored persons who should have been included in the jury list. If the 5,-

500 figure is utilized allowing for collection of about 50% of delinquent accounts, then 3,850 Negroes should have been listed for jury service.

But only 255 Colored taxpayers were placed on the 1945 jury list. On the basis of 7,000 eligible Negro jurors, then only 5% were placed on the jury list; on the basis of 2,800 eligible, less than 10% were listed; if 3,850 were considered eligible, only 7% were listed.

As to the White taxpayers, there were about 23,450 eligible for the jury list, of whom only 10,367 were actually placed thereon, thus omitting over 55% of their number.

To illustrate these figures more graphically, we insert at this point the following Table;

Table

Total number of taxpayers (Witness, Joyce)		43,000
Less firms, corporations, churches, partnerships, etc., listed		2,500
Leaving (net) total number of individuals listed as taxpayers		40,500
Which are made up of; (White)	32,500	
(White) Delinquents,	1,000	
(Colored)	4,000	
(Colored) Delinquents,	3,000	
	40,500	
Reduced by;		
Non-resident tax listers,	3% to 5%	
Women tax listers, (Witness, Joyce)	10%	
Guardians for minors tax listers, (Witness, Joyce)	5% to 10%	

Taxes uncollected, about (Witness Mickle)	1.28%	
Tax listers who are not of good moral character and who do not have sufficient intelligence (under GS 9-I) to qualify for jury service	3.72%	
	30.00%	12,150
Thus leaving (net) a total of individual male resident taxpayers of Forsyth County whose names under the General Statutes, are entitled to be placed in the jury box of said County,		28,350
ACTUALLY TODAY THERE ARE IN THE JURY BOX only,		10,622
THUS LEAVING A SHORTAGE (OR DISCREPANCY) OF NAMES NOT IN THE JURY BOX of		17,728
WHITE	33,500	
Deduct for women, non-residents, guardians, etc. (Above), (30%)	10,050	
	23,450	
Total number of White taxpayers whose names are now in the jury box (for 1945-1947) as		

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shown by "Stipulation of Counsel."	10,367
(Shortage)	13,083
Percent of White taxpayers whose names are in the jury box	44.28%
Percent of White taxpayers whose names were kept out of the jury box	55.72%
COLORED (NEGROES)	7,000
Deduct for women, non-residents, guardians, etc. (Above), (30%)	2,100
	4,900
Total number of Colored taxpayers whose names are now in the jury box (for 1945-1947), as shown by "Stipulation of Counsel."	255
(Shortage)	4,645
Percent of Colored taxpayers whose names are in the jury box,	5.48%
Percent of Colored taxpayers whose names were kept out of the jury box,	94.52%

The conclusion to be drawn from the above analysis is that 55% of the White prospective jurors were discriminated against and that from 90% to 95% of the Negroes were subjected to arbitrary discrimination and exclusion in the preparation of jury lists. Could a more flagrant case of discrimination be set forth?

Moreover, no one contradicted the existence of separate lists marked "Colored" for the biennial years 1941 and 1945. What was the purpose of such lists? On their face, they segregate on the basis of color a section of the eligibles from the remainder. What could have been the purpose of this segregation except to identify the Negroes as a group on the jury lists in order to limit and to exclude them from service on the juries? What legal justification for this exclusionary practice could there be? Certainly not qualifications of moral character or intelligence, which the Chairman of the Board of County Commissioners stated was responsible for a "very, very small" percentage of rejections. And, as shown above, there was an abundance of eligible jurors. There was no explanation in the evidence for these separate Negro lists.

The best proof of the results of the Board's practices in effectuating the exclusion of Negroes from juries is what actually occurred. From the lips of the Sheriff himself, who has held office continuously since 1936, it was recorded that no Negroes were summoned or served on the grand jury for the present term, which is the term embracing the trial of the case at bar, and that only one Negro, Jefferson H. Hairston, had been drawn and summoned for service, and was serving as a petit juror at the present term of said court. **His best estimate of the number of Colored people summoned for a period of last ten years was a dozen persons.** A local active trial lawyer, John D. Slawter, who had practiced for 31 years, could not state whether there had been as many as ten Colored jurors serving on grand and petit juries within the past ten years, and two other local citizens, Gene Pratt, and Christopher C.

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Kellum, testified that they had seen few, if any, on the petit juries.

A token compliance with the mandate of the 14th. Amendment, it is submitted, is equivalent to a studied and complete disregard of the meaning of equal protection of the law with respect to the selection of jurors. Hill vs. State of Texas, 316 U. S. 400.

The comment of the Supreme Court in analogous cases is illuminating. In Pierre vs. Louisiana, 306 U. S. 354 (1939), the court stated at p. 358;

> "Indictment by grand jury and trial by jury cease to harmonize with our traditional concepts of justice at the very moment particular groups, classes, or races—otherwise qualified to serve as jurors in a community—are excluded as such from jury service. The 14th. Amendment entrusts those who because of race are denied equal protection of the laws in a State first to the revisory power of the higher courts of the State, and ultimately to the review of this court."

The above case involved a motion to quash because of discrimination in the method of constituting the grand jury. Petitioner's witnesses testified that between 1896 and 1936 no Negroes had served on grand juries. A venire of 300 in 1936 contained names of three Negroes, one dead; one called for service in January 1937, was the only Negro called for jury service in memory of all witnesses including the Sheriff. About one-half the population of the parish was Negro.

The Court said that the fact that one-half the population was Negro demonstrated that there could have been no lack of colored residents over 21 years of age. . . . .

"There is no evidence on which even an inference can be based that any appreciable number of the otherwise qualified Negroes in the Parish were disqualified for selection because of bad character or criminal records. . . . The testimony introduced by petitioner's own motion to quash create a strong prima facie showing that Negroes had been systematically excluded because of race from the grand jury and the venire from which it was selected. Such an exclusion is a denial of equal protection of the laws contrary to the Federal Constitution—the supreme law of the land. . . . Principles which forbid discrimination in the selection of petit juries also cover the selection of grand juries. It is a right to which every colored man is entitled, that, in the selection of juries to pass upon his life, liberty, or property, there shall be no exclusion of his race, and no discrimination against them because of their color."

In Neal vs. Delaware, 103 U. S. 370 (1881), the Court sustained a motion to quash on the strength of an affidavit alone because (page 397):

" . . . . the fact (so generally known that the court felt obliged to take judicial notice of it) that no colored citizen had ever been summoned as a juror in the courts of the State—although its colored population exceeded 20,000 in 1870 and in 1880 exceeded 26,000, in a total population of less than 150,000—presented a prima facie case of denial, by the officers charged with the selection of grand and petit jurors, of that equality of protection which has been secured by the constitution and laws of the United States. It was, we think, un-

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der all the circumstances, a violent presumption which the State court indulged, that such uniform exclusion of that race from juries, during a period of many years, was solely because in the judgment of its officers, fairly exercised, the black race in Delaware were utterly disqualified, by want of intelligence, experience, or moral integrity, to sit on juries. The action of those officers in the premises is to be deemed the act of the State, and the refusal of the State court to redress the wrong by them committed was a denial of a right secured to the prisoner by the Constitution and laws of the United States."

In Norris vs. Alabama, 294 U. S. 587 (1934), in an opinion dealing with a motion to quash an indictment, it was said at page 593:

"The State Court rested its decision upon the ground that even if it were assumed that there was no name of a Negro on the Jury roll, it was not established that race or color caused the omission. The Court pointed out that the statute fixed a high standard of qualifications for jurors and that the Jury Commissioner was vested with a wide discretion. The Court adverted to the fact that more white citizens possessing age qualifications had been omitted from the Jury roll than the entire Negro population of the County, and regarded the testimony as being to the effect that the matter of race, color, politics, religion, or fraternal affiliations had not been discussed by the Commission and had not entered into their consideration and that no one had been excluded because of race or color . . . . and the Commissioner testified that in the selections for the Jury roll, no one was au-

tomatically and systematically excluded on account of race or color; that he 'did not inquire as to color, that was not discussed.' "

At Page 594, the Court added:

"But in appraising the action of the Commissioners, these statements cannot be divorced from other testimony. As we have seen, there was testimony, not overborne or discredited, that there were in fact Negroes in the County qualified for jury service. That testimony was direct and specific. After eliminating those persons as to whom there was some evidence of lack of qualifications, a considerable number of those remained. The fact that the testimony as to these persons, fully identified, was not challenged by evidence approximately direct, cannot be pushed aside. There is no ground for an assumption that the names of these Negroes were not on the preliminary list. The inference to be drawn from the testimony is that they were on that preliminary list, and were designated on that list as the names of Negroes, and that they were not placed on a Jury roll. There was thus presented a test of the practice of the Commissioners. Something more than mere general asseverations was required. Why were these names excluded from the jury? Was it because of the lack of statutory qualifications? Were the qualifications of Negroes actually and properly considered?"

"The testimony of the Commissioner leads to the conclusion that these or other Negroes were not excluded on account of age, or lack of esteem in the community for integrity and judgment, or

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because of disease or of any other qualification. The Commissioner's answer to specific inquiry upon this point was that Negroes were never discussed . . . . . We think that the evidence that for a generation or longer no Negro had been called for service on any jury in Jackson County, that there were Negroes qualified for jury service, that according to the practice of the jury commission their names would normally appear on the preliminary list of male citizens of the requisite age, but that no names of Negroes were placed on the jury roll, and the testimony with respect to the lack of appropriate causes of the disqualification of Negroes established the discrimination which the Constitution forbids. The motion to quash the indictment on that ground should have been granted."

Finally, the Supreme Court had to consider a motion to quash on an indictment and conviction for rape in the case of Smith vs. Texas, 311 U. S. 128 (1940).

In that case the Negroes of the county comprised 20% of the population and 10% of the poll tax payers. A minimum of 3,000 to 6,000 measured up to qualifications for jury service. From 1931 to 1938, five of 384 grand jurors were Negroes. Total number summoned for grand jury service was 512, of whom 18 were Negroes. Of the 18 summoned, 13 appeared as the last names on a 16-man jury list, the first 12 of whom were selected.

As a result of this numbering, only 5 ever served, whereas 339 of the 494 white men summoned actually served. It also appeared that of the 32 grand juries empaneled, only 5 had Negro members, while 27

had none, and that of the 5, the same individual served three times, so that only three individual Negroes served at all. The tabulation of colored citizens serving on grand juries was as follows; 1931—1; 1932—2; 1933—1; 1934—1; 1935—none; 1936—1; 1937—none; 1938—none.

The Court, passing on these facts stated at page 130:

> "It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community. For race discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted thereunder (18 Stat. 336, 8 U. S. C., sec. 44), but is at war with our basic concepts of a democratic society and a representative government. We must consider this record in the light of these important principles. The fact that the written words of a states' laws hold out a promise that no such discrimination will be practiced is not enough. The 14th. Amendment requires equal protection to all must be given—not merely promised. . . . Chance and accident alone could hardly have brought about the listing for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service."

The Court stated the denial by two jury commissioners that they intentionally, arbitrarily or systematically discriminated against Negro jurors was not sufficient.

> "But even if their testimony were given the greatest possible effect, and their situation con-

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sidered typical of that of the 94 commissioners who did not testify, we would still feel compelled to investigate the decision below. What the 14th. Amendment prohibits is racial discrimination in the selection of grand juries. Where jury commissioners limit those from whom grand juries are selected to their own personal acquaintance, discrimination can arise from commissioners who know no Negroes as well as from commissioners who know but eliminate them. *If there has been discrimination, whether accomplished ingenuously or* ingeniously, the conviction cannot stand" (Italics supplied).

What more appropriate comment could be made with respect to the case at bar?

The Supreme Court of North Carolina, in its opinion in 227 N. C. 552, refers to the case of State vs. Walls, 211 N. C. 487, appeal dismissed, 302 U. S. 635, as being analogous to the cases at bar. It is respectfully submitted that an examination of the last cited case reveals no identity with the facts of the present cases. In the Walls case, there was no positive evidence as to the exclusion of Negroes in the record, aside from proof that in the preparation of the jury lists there was the use of different colored inks for white and Negro citizens.

There is consequently no resemblance between the unchallenged proof of discrimination by the Board of County Commissioners and the Superior Court of Forsyth County and the failure to establish discrimination in the Walls case.

The case at bar is not at all similar to, and may be distinguished from and in many respects differentiated from, the cases of Fay vs. New York and Bove

vs. New York, 91 U. S. (LE) 1517, decided June 23, 1947.

First, in those cases the Negro or race question was not raised or brought in question, and therefore 18 Stat. 336 (1874) 18 U. S. C. Sec. 44, (enacted under the power granted Congress under the provisions of Sec. 5 of the 14th. Amendment of the Federal Constitution) could not be availed of. In the case at bar the petitioner is a Negro and the Negro or Race question is raised and brought in question and said Statute, 18 U. S. C. Sec. 44, is relied upon and set up.

Second, in those cases the alleged discrimination was not shown to exist for any considerable period of time past, while in the case at bar the discrimination is alleged and proven to have existed for a long period of time, namely, 10 years.

Third, in those cases the court said: "The defendants raise no question as to the constitutionality of the general statutes of New York which prescribe the qualifications, disqualifications and exemptions for ordinary jury service. Neither is any question raised as to the administraton of these general statutes by which the population of New York County, numbering some 1,800,000 is sifted to produce a general jury panel of about 60,000 unless it be there is discrimination against women" (page 1521). In the case at bar the constitutionality of the General Statutes of North Carolina, with their qualifications, disqualifications and exemptions, as well as the administration of these General Statutes, is raised and set up.

II

The Statutes of North Carolina permitting discrimination against White and Negro citizens in jury

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selection violate the 14th. Amendment of the Federal Constitution.

It is submitted that Chapter 9 of the North Carolina General Statutes creates unconstitutional limitations on the selection for grand and petit jurors, as well as talesmen. For example, Section I restricts the jury list to tax payers, who are either property owners or polltax payers (Chapter 105, Section 341). Furthermore, polltax payers include only males between the ages of 21 and 50. Thus, if a male over 50 possesses no property he is excluded from jury service by the terms of the statute. Then Section II of Chapter 9 requires that talesmen be freeholders.

As a consequence, the payment of taxes and the possession of property are made prerequisites for jury service, and an entire class of propertyless males over 50 years of age are precluded from jury service. These disqualifications have no reasonable relationship to competency for jury service, but exclude a substantial economic segment of the community from involvement in the trial of causes that may well effect their status. Viewed from the aspect of the accused, defendants from the lowest economic levels of society are confronted with juries that are unrepresentative of the class of persons from which they emerge.

The cases at bar represent a vivid example to illustrate how humble toilers may suffer prejudice when tried by jurors whose qualifications include the payment of taxes and the ownership of property. These lowly laundry workers were involved in a labor dispute that can arouse the emotions of an entire community to a fever pitch and divide its sentiment along strictly economic lines. Can it be said

that these petitioners could secure a fair trial from a jury that excluded the propertyless?

The Supreme Court of the United States reasoned along similar lines in the case of Thiel vs. Southern Pacific Co., 665 Ct. 984, at pages 985 and 986 of the opinion:

"The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. . . . . This does not mean, of course, that every jury must contain representatives of all economic, social, religious, racial, political and geographical groups of the community, frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury. . . . . Wage earners, including those who are paid by the day, constitute a very substantial portion of the community, a portion that cannot be intentionally and systematically excluded in whole or in part without doing violence to the democratic nature of the jury system. Were we to sanction an exclusion of this nature, we would encourage whatever desires those responsible for the selection of jury panels may have to discriminate against persons of low economic and social status. We could breathe life into any latent tendencies to

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establish the jury as the instrument of the economically and socially privileged. That we refuse to do."

See also Glasser vs. U. S., 315 U. S. 68, 85, 62 S. Ct. 457.

Chapter 9, General Statutes of North Carolina, Section II, provides that to avoid a defect in the number of available petit jurors the Court may direct the sheriff to summon from the community talesmen who must be freeholders, however; or the Court may have the names of such talesmen chosen from the regular jury box.

Finally, it is submitted that the statute is unconstitutional since it fixes as a prerequisite to eligibility for jury service as talesmen the ownership of real property. This is discriminatory against those who do not own real estate. The same arguments and reasons apply here as were made in connection with the statutes requiring payment of taxes as a precondition for jury service.

In the Thiel case (Thiel vs. Southern Pacific Co., supra) a passenger on a railroad sued in the Federal Court for personal injuries suffered by him on a train. He moved to strike the jury panel on the ground that there was a deliberate and intentional exclusion from the jury list of persons who worked for a daily wage. Testimony was taken establishing such a practice, but the particular jury which heard the case did have at least 5 members of the laboring class on it. The high court reversed the District Court, which had denied the motion to strike the jury panel. The Court stated:

"It is likewise immaterial that the jury which actually decided the factual issue in the case was found to contain at least five members of the labor-

ing class. The evil lies in the admitted wholesale exclusion of a large class of wage earners in disregard of the high standards of jury selection. To reassert those standards, to guard against the subtle undermining of the jury system, requires a new trial by a jury drawn from a panel properly and fairly chosen."

A jury must be fairly and impartially drawn from the community, without discrimination. The 14th. Amendment operates as a prohibition against the policy or practice of excluding any particular group or class. A jury should be fairly and impartially made up out of the whole fabric of the community. (See Smith vs. State, 45 Tex. Cr. 405, 77 S. W. 453 (1903); 19 Boston Un. Law Rev., 413, 430). Quotas for particular races do not make properly constituted jury lists or panels; it is the bona fide absence of discrimination in drawing up these jury panels in the first instance which makes a fair and impartial jury.

The petitioners are Negroes. The physical difference of race raises no problem of law on the motion to quash the jury panel. The action of the Board of County Commissioners in excluding large numbers of Negro eligible persons from the jury lists not only worked prejudice to the defendant but the action also of said Board in excluding large numbers of White eligible persons from the jury lists worked prejudice to the defendant. It is submitted that the unconstitutional method of selecting the jury by systematically excluding Colored persons, and White persons as well, invalidated the jury panel and made it incompetent as to the defendant.

If the motion to quash the jury panel because of the alleged illegal and unconstitutional manner of its selection is on firm ground, it then follows that the

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proceedings from there on were superfluous and meaningless and no jury, afterwards impaneled after the motion to quash had been overruled and denied, in law was eligible to try the case.

In Thiel vs. Southern Pacific Co., supra, the Court stated that "it becomes unnecessary to determine whether the petitioner was in any way prejudiced by the wrongful exclusion or whether he was one of the excluded class." It was sufficient, the court said, that "we cannot sanction the method by which the jury panel was formed in this case." (66 S. Ct. at page 988, and cases there cited.)

Likewise, in Glasser vs. U. S., supra, the Supreme Court stated that had there been sufficient proof of deliberate selection of juries from a particular private organization of women, the panel would have invalidated because of the exclusion of all women not members of the organization. This apparently would have been true because a fair and impartial jury would have been lacking, despite the fact that the accused was male.

In Ballard vs. U. S. 67 S. Ct. 261 (1946), the indictment was dismissed as to the male and female defendants because of the purposeful and systematic exclusion of women from the panel from which the grand jury was drawn.

The logical basis of these decisions is that the failure to draw a jury impartially and fairly from the community, without the exclusion of any group or class, is deemed prejudicial, irrespective of the particular status of the defendant.

III

The Petitioner invoked the proper procedure to challenge the validity and constitutionality of the

practices used by the County and the Court in drawing and selecting the jury by filing their motion to quash prior to the trial of the cause in the Superior Court of Forsyth County.

The Petitioner's motion properly presented a challenge to the array, raising the question of the invalidity of the entire jury panel because of exclusionary practices and statutory defects. Numerous cases coming to this Court from common law jurisdictions have used the same procedure. Hill vs. Texas, supra; Norris vs. Alabama, supra; Neal vs. Delaware, supra. The State of North Carolina is a common law jurisdiction (General Statutes of North Carolina, Chapter 4, Sec. 1). Furthermore in State vs. Kirksey, 227 N. C. 445, at page 447, the Supreme Court of North Carolina stated;

"If defendant had wished to take advantage of his objection to the petit jury and special venire, he should have done so by challenging the array, State vs. Douglass, 63 N. C. 500, and before entering upon the trial of the case."

Likewise, by implication the Supreme Court of North Carolina in the cases of State vs. Peoples, 131 N. C. 784, and State vs. Daniels, 134 N. C. 641, gave its approval to the use of the motion to quash in connection with petit juries as well as grand juries.

It is therefore difficult for the petitioner to follow the reasoning of the Supreme Court of North Carolina in its opinion below where the Court apparently confused a challenge to the array with a challenge to the polls.

The reservation of the exceptions to the rulings on the motion and to the Court's findings thereon, with respect to the regular panel, conclusively estab-

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lishes that the Petitioner's objections were taken in a proper form and at the proper time.

Nothing done or omitted to be done by the Petitioner in any way amounted to consent to the court's actions, or waiver or abandonment of petitioner's constitutional rights.

It is significant that neither the Superior Court of Forsyth County, nor the State on appeal in the Supreme Court of North Carolina, made any reference to any possible procedural deficiencies in presenting the questions clearly to the Supreme Court of North Carolina.

The Supreme Court of North Carolina did rule on the Federal questions presented to it, even though it made some comment about Petitioner's failure to exercise a remaining peremptory challenge and the alleged contention of Petitioner with the jury later selected and drawn after the motion to quash had been heard and overruled, and petitioner had duly excepted thereto. The Petitioner is unable to comprehend the precise meaning of the Supreme Court of North Carolina in its discussion of the procedural question since the law of North Carolina was carefully followed in presenting the questions, and exceptions were duly noted, and none of petitioner's rights were waived. Petitioner is at a loss to understand what more, if anything, could have been done by them to raise the questions presented to this court, and to preserve their rights in the premises.

In any event, the Petitioner submits that considerations of insubstantive technical procedure should not preclude this Court from reviewing serious questions affecting basic and fundamental constitutional rights. Hormel vs. Helvering, 312 U. S. 552.

CONCLUSION.

In the light of the flagrant discriminatory practices outlined in the Petitioner's brief, it is most respectfully urged that no more deserving or appealing cause for review by this Court of violation of the 14th. Amendment could be presented. Because of the inability to secure a trial by a fair and impartial jury, devoid of discriminatory imperfections, an humble Negro worker will be subjected to harsh and excessive punishment. And beyond the confines of this case, the public officials of Forsyth County will be encouraged to continue their practices of discrimination, which make it impossible for the poor and the lowly of Forsyth County to secure a trial by a jury constitutionally composed of a cross-section of the community. This Court should not permit any superficial barriers of technical procedure or vocal denials of discrimination, however cleverly and adroitly planned, to obscure a concealed deprivation of fundamental constitutional rights and prevent their elimination by the mandates of this Court. As stated by this Court in Smith vs. Texas, supra, page 131, "If there has been discrimination, whether accomplished ingenuously or ingeniously, the conviction cannot stand."

It is respectfully submitted that these cases call for exercise by this Court of its jurisdiction under Section 237 (b) of the Judicial Code; and that to such end writs of certiorari should issue to the Supreme Court of North Carolina.

WILLIAM R. DALTON,

NATHAN WITT,

Attorneys for Petitioner.

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